

**ADDENDUM to the FINAL STATEMENT OF REASONS  
EMPLOYER TESTING PROGRAM (ETP)**

TITLE 13, ARTICLE 2.1.

Sections 25.06, 25.07, 25.08, 25.10, 25.14, 25.15,  
25.16, 25.17, 25.18, 25.19, 25.20, 25.21 and 25.22

**1) The Update to the Initial Statement of Reasons**

There are no changes to the initial statement of reasons, which is hereby incorporated by reference, with the exception of the following:

**25.06(a)**

The term “which is hereby incorporated by reference” was added to the express terms for the DL 170F ETP, (NEW 11/05) form that was incorrectly identified in the final statement of reason as the DL 170 ETP, (NEW 11/05) in Section 25.06(a) of these regulations. As the form is the restricted firefighter alternative form to the Certificate of Driving Skill form and contains the same information requests as the Certificate of Driving Skill, therefore no additional rationale is provided.

**25.07(c) (1)**

In Section 25.07(c)(1) of these regulations, the DL 520F ETP form was incorrectly identified as the DL 520 ETP. The term “which is hereby incorporated by reference” was also added. The form contains the same information requests as the DL 520 ETP form, therefore no additional rationale is provided.

**25.08(k) and NOTE**

In Section 25.08(k) of these regulations, the section ends with the term “after these regulations are adopted.” This term is no longer necessary as the section has already been adopted and is now unnecessary. The “NOTE” which identifies the authority sections includes Labor Code section 1132.2. That section no longer applies and is proposed to be deleted. The term “employer” is now identified in Section 25.06(e) of these regulations.

**25.18(g)**

The proposed language for this subsection is now being deleted. It is being removed to meet the clarity standard. The requirement to meet the 90 day rule is in Section 25.19(f)(1), 25.19(g)(10), 25.21(c)(2) and 25.22(f) of these regulations.

**25.18(h)**

The proposed training fee was increased to \$150 per person, even though the fee by itself did not cover the cost of the training for each person. Overall program revenue, which includes an annual renewal fee of \$15 from each ETP participant, justifies the \$150 fee instead of the \$169.84 cost per person to conduct the training.

**25.19(f)(1)**

The proposed language misstates the number of consecutive days when an examiner is required to retest. The proposed express terms should state that an examiner has 90 consecutive days to conduct a drive test.

**25.20 (b)**

The proposed language lists the Application for Employer Number Addendum with a revision date of 10/05, which is incorrect. The revision date for the form is 11/05.

**25.21(c) and (c)(3)**

The proposed language in Section 25.21(c) has the term “a” at the end of the sentence marked to delete, when, in fact, it does not appear in 25.21(c).

The proposed language in Section 25.21(c)(3) starts with the term “and has” which was not in the original language and is proposed to be deleted.

**25.22(a), (f) and (m)**

The language “Upon adoption of these regulations” in 25.22(a) is confusing. The language was added in the final rulemaking file (OAL File # 03-1118-01 SR) that was adopted in 2003 and is no longer valid. Therefore, the language is proposed to be deleted.

The numbering of the sections in 25.22(f) and (g) are proposed to be amended with the old numbering included and deleted with the correct section.

The form identified in Section 25.22(m) as the Medical Examination Report was accidentally excluded from the final rulemaking file.

**2) Imposition of Mandate on Local Agencies or School Districts**

The department's regulatory action amending Sections 25.06, 25.07, 25.08, 25.10, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, and 25.22 in Article 2.1, of Chapter 1, of Division 1, of Title 13, in the California Code of Regulations, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency, (2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other non-discretionary cost or savings to local agencies, and (4) no costs or savings in federal funding to the state. No studies or data were relied upon to make this determination.

**3) Summary of Comments Received and Department Response**

The proposal was noticed on August 5, 2005, and made available to the public from August 5, 2005 through September 19, 2005. The department received two binders of written and oral comments during the public comment period which have been included in this rulemaking file. Two public hearing were held, one each in northern and southern California.

*Comments suggesting alternatives:*

Many of the comments received by the department included creative alternatives to the proposed regulations, the department is continuing to explore alternatives, including some mentioned in the comments, that might be less burdensome for the participants and the department. Although, the main focus for the department is to remain compliant with the federal regulations. The department will present these alternatives to the ETP federal liaison after the department has developed a complete implement plan.

***Comments regarding 90 day rule:***

One of the concerns brought to the department's attention by the federal auditors during the exit conference was that some of California's third-party (aka ETP) examiners were conducting few or no drive tests on an annual basis. Although the federal regulations have not established a minimum number of drive tests to stay proficient, the federal auditors believe California's ETP program, with its examiners limited activity and as it is implemented, is not meeting the federal regulations for examiners to maintain his/her driver evaluation skills sufficient for determining a driver's proficiency to operate a commercial class A or B vehicle and to provide standardized testing to all drivers when conducting the commercial drive test.

**4) Determination of Alternatives**

No alternative considered by the department would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the adopted regulations. This voluntary program governed by federal regulations and administered by the department, allows minimum flexibility in changing the requirements.

Originally the federal auditors wanted 50 to 60 tests a year per examiner. Most employers would not be able to qualify one examiner to provide such extensive testing. The department, working with the federal auditors, reviewing the program and based on discussions with the federal auditors in the exit conference made an effort to lessen adverse economic impact wherever possible, therefore the 90 day rule was the limit acceptable to the federal auditors to ensure that examiners retain all the information required to provide consistent and standardized testing. During the rulemaking process no reasonable alternative that would lessen the adverse economic impact on small business was submitted.

**5) Incorporated by Reference**

Seven forms are incorporated by reference in the rulemaking file, which are the following:

Firefighter Certificate of Driving Skill.....DL 170F ETP (NEW 10/05)

Employer Testing Program Commercial Driving  
 Performance Evaluation (DPE) Route & Directions.....DL 814 ETP (Rev.  
 2/05)  
 Application for Employer Number Addendum.....DL 520F ETP (NEW  
 11/05)  
 Employer Testing Program  
 Examiner Driver Testing Log.....DL 819 ETP (NEW 1/2005)  
 Employer Testing Program  
 Request for Examiner Application.....DL 811 ETP (Rev.  
 1/2005)  
 Employer Testing Program  
 Request for Reinstatement-Examiner.....DL 810 ETP (Rev.  
 1/2005)  
 Medical Examination Report.....DL 51 (Rev.  
 6/2005)

The department finds that it would be cumbersome, unduly expensive, or otherwise impractical to publish the document incorporated by reference in this regulatory action in the California Code of Regulations, and the documents are readily available from the department. The documents were made available upon request directly from the department. When approved, the forms will be available to the public on the Internet.